Transfer of Property
KEESM 5720 & Summary of Changes 5/07

What is Transfer of Property?
It is an act which partially or totally passes the use, control or ownership of property, either resources or income, to another individual (s) or corporation.

- Adding or removing a names or other owners of property
- Purchase or sale of property
- Transferring or disclaiming income or right to income not yet received
- Purchase sale of notes, loans, annuities or similar financial instruments
- Placing a resource in a trust/annuity/disclaimer of inheritance (KEESM 5722)
- Gift of cash
- Give up legal or equitable interest in an asset

Look back period is 60 months before the month of application (or the month assistance is requested in, if prior medical is requested).

01/05 ◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄◄ 01/10
(App Mo)

How Can I Tell if a Transfer has Occurred?

Thorough examination of client circumstance and good interviewing skills.
Look for:

- ✓ Resources previously listed on the application are no longer listed on the redetermination form
- ✓ Expenses in excess of income
- ✓ Exempt resources converted to a nonexempt resource then transferred
- ✓ Examination of bank statements
- ✓ Spousal Impoverishment cases where community spouse passes away. LTC spouse entitled to spousal elective share.

***For more information on spousal elective share go to KEESM Policy Memos and select 2002 Policy Memos.**

1/2010

Exempt Transfers KEESM 5721

- Transfer occurred before look back period based on application date.
- Received FMV (Fair Market Value) or expect to receive within an actuarially sound period.
- LTC individual's home transferred to:
  - ✓ spouse
  - ✓ child if under age 21
  - ✓ adult child who meets blindness or disability criteria per KEESM 2662
  - ✓ adult child who resided in the home for 2 years immediately before the date the individual entered LTC and they provided care that allowed the individual to reside in the home instead of a LTC arrangement. Care provided must be documented by third party.
  - ✓ sibling who as equity interest in the home, resided in the home for 1 year immediately before the date the individual entered LTC

- Transfer into a trust for the sole benefit of
  - ✓ child who meets blindness and disability criteria per KEESM 2662
  - ✓ individual under age 65 who meets blindness and disability criteria

- Prior approval of transfer by agency
- Transfer voided by Estate Recovery Unit
- Fair Market Value received or expected to be within a actuarially sound period of time

- Transfer of an exempt asset to LTC individual or spouse, if resource would have been exempt at time of transfer **unless it is one of the following below.**

  - **Home and surrounding property (includes transfer of life estate interest only)**
  - **Income-producing property with value greater than $6,000**
  - **Purchase annuity, promissory note, contract sale, loan or mortgage**
  - **Any otherwise exempt resource that was transferred by means of a constructive or step transaction transfer as described in KEESM 5722.9.**

Constructive Transfer
An uncompensated transfer will be deemed to have occurred where the individual uses countable resources to purchase an exempt resource and retains legal title to the resource but allows another individual the full use, enjoyment and possession of the resource.

Example: An individual purchases a new vehicle in their own name for $20,000 and immediately gives possession of the vehicle to another family member for their exclusive use. Even though the individual still retains legal title to the vehicle, an uncompensated transfer has occurred.

Step Transaction
An uncompensated transfer will be deemed to have occurred where a countable resource was used to purchase an exempt resource that is then transferred to another individual. The steps in the transfer process are ignored to look at the ultimate outcome of the transaction.

Example: An individual uses $20,000 in savings to purchase a new vehicle in their own name and then immediately transfers title to the vehicle to another family member. A $20,000 uncompensated transfer will be deemed to have occurred because the ultimate outcome of the transaction was that $20,000 in savings was gifted away.

5/2009

How does a transfer affect eligibility?

Inappropriate transfers of property result only in ineligibility for long term care payment:

- NF or NF/MH
- Head Injury Rehabilitation Facility
- Swing Bed Hospital
- ICF-MR (intermediate care facility for the mentally retarded)
- PRTF (Psychiatric Residential Treatment Facility)
- HCBS coverage
- PACE (Program of All-Inclusive Care for the Elderly) coverage

Can eligibility for other programs be determined during a penalty period? YES!!!

Coverage for the following programs can be established during a penalty period:

- Medically Needy
  - Nursing facility costs cannot be allowed to meet a spenddown
  - Community based expenses (Home health services) can be allowed up to $1,000 a month. Documentation must be provided. These expenses will be entered on the MEEX screen. Medical Necessity Appendix P-1, section d#23)
- Medicare Savings Programs (QMB, LMB, ELMB & Part D Subsidy)
- SSI & Protected Medical Groups (i.e. Adult Disabled Child)

How is a penalty established?

In general to determine the gross uncompensated value use the following equation:

Fair Market Value – Compensation – Encumbrances = Value

Examples: $100,000 (home) - $10,000 (payment) -$50,000 (mortgage loan) = $40,000 uncompensated value for determining TOP penalty

Defining FMV, compensation and encumbrances will depend on the specific resource. The TOP Worksheet (Appendix W-9) defines the above for contract sales, loans, notes, mortgages and annuities.
1/2009

When must life expectancy be considered for a transfer?

When there is a scheduled receipt of compensation after the date of transfer, compensation must be received within the expected lifetime of the recipient or spouse. Expected lifetime is determined at the time of transfer. Appendix Item T-4, Life Expectancy Table, is used to determine life expectancy for these types of transfers.

Transfers before 2/8/06 **Penalty = Months**	**Transfers on or after 2/8/06** **Penalty = Days**
Applicants Penalty begins month of transfer	Applicants Penalty begins the date the consumer is eligible for LTC Medicaid payment or the 1st month asset transferred, whichever is later
Recipients Penalty begins no later than the 2nd month following the month of transfer to allow for timely and adequate notice	Recipients Penalty begins no later than the 2nd month following the month of transfer to allow for timely and adequate notice
Divide uncompensated value by $4,000 to determine the number of penalty months. Round down to the next lowest number.	Divide uncompensated value by average NF private pay daily rate to determine penalty period for transfers on or after 2/8/06. ***NF Private pay daily rate updates every July!!!***

How do I determine a penalty when there are multiple transfers? KEESM 4724.3

Multiple Transfers prior to 2/8/06	**Multiple Transfers prior to 2/8/06**
Consider total value of all transfers and divide by $4,000. The penalty period would begin with the 1st month property was transferred.	Consider total value of all transfers and divide by the NF average private pay daily rate. When the penalty begins is based on applicant or recipient status.

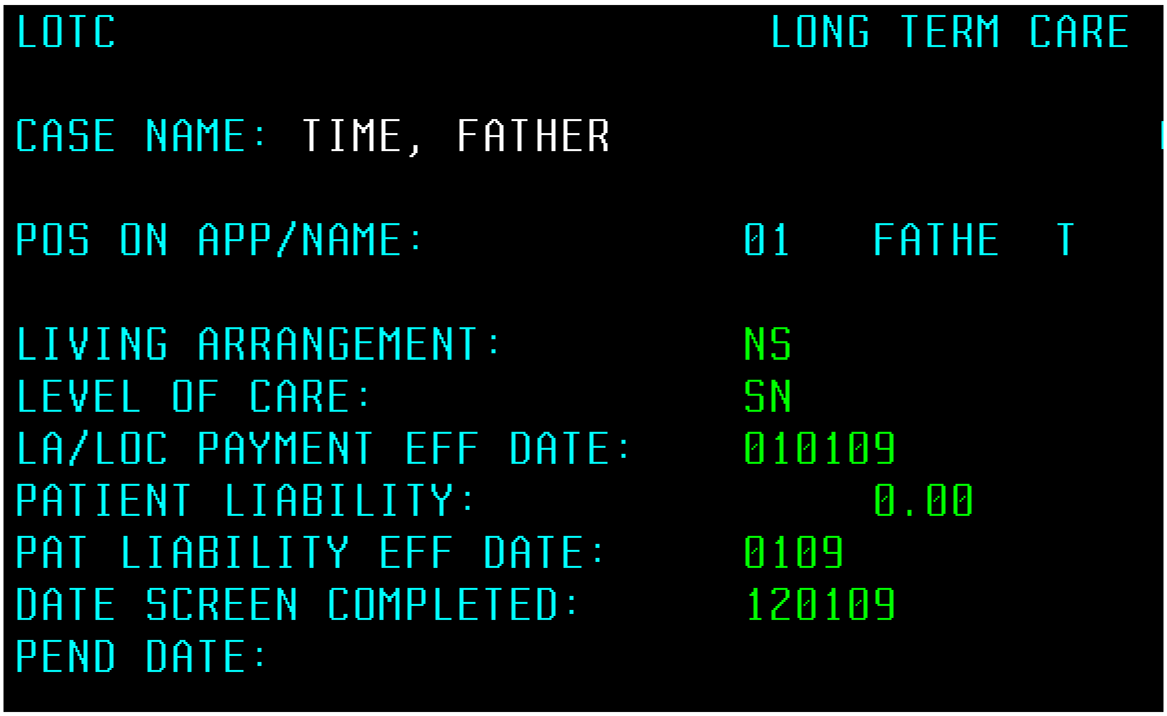
What if an individual has an ongoing penalty period and I discover another inappropriate transfer? KEESM 5725.6

The new penalty will begin the day after the expiration of the current penalty period.

5/2009

How do I code the LOTC screen when there is ineligibility for LTC payment?

LOTC transmits long term care information to MMIS. During a penalty period, LTC payment cannot be authorized. It is important to use the appropriate coding to inform MMIS of this status.



LOTC LONG TERM CARE

CASE NAME: TIME, FATHER

POS ON APP/NAME: 01 FATHE T

LIVING ARRANGEMENT: NS
LEVEL OF CARE: SN
LA/LOC PAYMENT EFF DATE: 010109
PATIENT LIABILITY: 0.00
PAT LIABILITY EFF DATE: 0109
DATE SCREEN COMPLETED: 120109
PEND DATE:

Living Arrangement: NS = No State Payment

Level of Care: Use level of care code for the particular living arrangement.

LA/LOC Payment Eff Date: Enter start date of penalty

1/2009

VOIDABLE

Transfers of Property (KEESM 1725.6)

Transfers of property by medical assistance recipients who are subject to estate recovery may be voided based on State law. The provision was adopted to maintain the estate of the individual and prevent it from being depleted for other than normal living expenses, **thus** protecting the agency's recovery rights.

Persons Affected	❖ Recipients age 55 or older at the time of transfer ❖ Recipients receiving long term institution or HCBS care at the time of transfer
What Transfers are Affected	❖ Transfers made on a date the individual was a medical assistance recipient. ❖ Transfers which are not penalizable through the transfer of property provisions ❖ Transfers which were penalizable but the penalty period expired before it was applied. ❖ Transfers of any property, exempt or non-exempt, which equal or exceed the following thresholds must be referred to ERU. • For real property, the total (FMV) value of the property transferred must be $15,000 or more. • For personal property , the total value of the property must be $2000 or more ❖ Transfers between husband and wife that are not part of the division of resources as per KEESM 5721. This includes the home, other exempt and/or later acquired assets that did not fall under the original resource division.
Transfers not Affected	❖ Transfers prior to the effective date of medical coverage cannot be voided but are subject to provisions of KEESM 5720 and subsections. ❖ Transfers to children under the age of 21 or an adult child who meets the blindness or disability criteria established by Social Security. ❖ Transfers resulting from the original resource division in accordance with the spousal impoverishment provisions of KEESM 8144 and 8244.
Referral Process	❖ If the transfer potentially effects eligibility based upon the transfer provisions of KEESM 5720 and meet the requirements state above • The EES worker determines and applies the appropriate penalty to the case • The EES worker refers the information to ERU for a determination of voidability • If ERU voids the transfer, the EES worker will be notified, the transfer of property penalty would be lifted, and payment for HCBS/NF care would be reinstated. • If ERU does not pursue voiding the transfer, the transfer of property penalty would stand.

1/2009